THE HON'BLE SRI JUSTICE N.V. RAMANA

Writ Petition No. 26805 of 2006

Dated: 02.01.2007

Between:

S. Sankarappa, s/o S. Narsimhulu, aged 68 years, Occ: Retd. Senior Assistant, R/o Kosuvaripalli post and village, Thamballapalli Mandal, Chittoor District.

.... PETITIONER

AND

The Government of A.P., Department of Revenue, rep. by its Principal Secretary and another.

.....RESPONDENTS

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Order:

Heard the learned counsel for the petitioner and the learned Government Pleader for Revenue.

The petitioner, who retired from service as Senior Assistant in the Mandal Revenue Office, Thamballapalli Mandal, Chittoor District, has filed this writ petition seeking to regularize his break in service from 21.01.1969 to 31.03.1985 for the purpose of computing and drawing pensionary benefits.

The petitioner is a Government Employee, and having regard to the provisions of Articles 323-A and 323-B of the Constitution of India, any dispute arising out of his employment, shall have to be adjudged by the Tribunal constituted therefor. Therefore, this Court had its own doubts about entertainment of the writ petition, and when this Court posed a question as to the maintainability of the writ petition, the learned counsel for the petitioner, placing reliance on the judgment of this Court in ***A. Venkateshwara Rao v. Bharat Electronics Limited, Machilipatnam***[1], submitted that the present writ petition, filed by the petitioner seeking regularization of his break in service is maintainable.

On the other hand, the learned Government Pleader for Revenue, having regard to the judgment of the apex Court in

L. Chandra Kumar v. Union of India[2], submitted that the remedy of the

petitioner, if any, is to approach the A.P. Administrative Tribunal, constituted under Articles 323-A and 323-B of the Constitution of India, and he cannot directly approach this Court under Article 226 of the Constitution of India.

Heard the learned counsel for the petitioner and the learned Government Pleader for Revenue for the respondents.

The petitioner is a government employee. He having served the government in the Revenue Department, had already retired from service on attaining the age of superannuation.

Since the petitioner is a government employee, any dispute arising out of his employment, whether it relates to regularization of his break in service or otherwise, having regard to the provisions of
Articles 323-A and 323-B of the Constitution of India and the judgment of the apex Court in **L. Chandra Kumar v. Union of India**, has to be first raised before the A.P. Administrative Tribunal, constituted for the purpose, which is competent and empowered to even look into the vires of the statutory legislations.

The apex Court in **L. Chandra Kumar v. Union of India**, held thus.

> "In view of the reasoning adopted by us, we hold that Clause 2(d) of Article 323A and Clause 3(d) of Article 323B, to the extent they exclude the jurisdiction of the High Courts and the Supreme Court under Articles 226/227 and 32 of the Constitution, are unconstitutional. Section 28 of the Act and the "exclusion of jurisdiction" clauses in all other legislations enacted under the aegis of Articles 323A and 323B would, to the same extent, be unconstitutional. The jurisdiction conferred upon the High Courts under Articles 226/227 and upon the Supreme Court under Article 32 of the Constitution is part of the inviolable basic structure of our Constitution. While this jurisdiction cannot be ousted, other Courts and Tribunals may perform a supplemental role in discharging the powers conferred by Articles 226/227 and 32 of the

> Constitution. The Tribunals created under Article 323A and Article 323B of the Constitution are possessed of the competence to test the constitutional validity of statutory provisions and rules. All decisions of these Tribunals will, however, be subject to scrutiny before a Division Bench of the High Court within whose jurisdiction the concerned Tribunal falls. The Tribunals will, nevertheless, continue to act like Courts of first instance in respect of the areas of law for which they have been constituted. It will not, therefore, be open for litigants to directly approach the High Courts even in cases where they question the vires of statutory legislations (except where the legislation which creates the particular Tribunal is challenged) by overlooking the jurisdiction of the concerned Tribunal. Section 5(6) of the Act is valid and constitutional and is to be interpreted in the manner we have indicated.
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> All these matters may now be listed before a Division Bench to enable them to be decided upon their individual facts in the light of the observations contained in this judgment.

A bare reading of the said judgment clearly shows that it is not open for the litigants to directly approach the High Courts even in cases where they question the vires of statutory legislations (except where the legislation which creates the particular Tribunal is challenged) by overlooking the jurisdiction of the concerned Tribunal. In view of the above, the remedy of the petitioner is to approach the A.P. Administrative Tribunal, but he certainly cannot maintain the present writ petition before this Court, by overlooking the jurisdiction of the A.P. Administrative Tribunal, which in fact, has been constituted for resolving the disputes arising out of employment in the State Government. In that view of the matter, this Court cannot entertain the present writ petition, and the same is liable to be dismissed as not maintainable.

Accordingly, the writ petition is dismissed as not maintainable. No costs.

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N.V. RAMANA, J.

Date: 02.01.2007
Nsr/Grr

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[1] 2005 (3) ALD 333

[2] AIR 1997 SC 1125